

(1982) 02 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 375 of 1979

Ganesh Dass Ram Gopal

APPELLANT

Vs

Inspecting Assistant Commissioner of Income Tax and
Another

RESPONDENT

Date of Decision : 04-02-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 253, 256(1), 274, 274(2)
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 253, 256(1), 274, 274(2)
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 253, 256(1), 274, 274(2)

Citation : (1982) 28 CTR 83 : (1983) 142 ITR 101 : (1982) 11 TAXMAN 150

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Judgement

K.N. Seth, J.—For the assessment year 1970-71 while finalising the assessment the ITO came to the conclusion that the assessee had concealed particulars of its income. Since the minimum penalty leviable exceeded Rs. 25,000 he referred the case to the IAC u/s 274(2) of the I.T. Act. From the regular assessment the assessee preferred an appeal which was decided partly in its favour. On appeal by the Department, the Income Tax Appellate Tribunal by its order dated July 23, 1976, came to the conclusion that the assessee had suppressed particulars of the income of Rs. 81,000 odd. Thereafter, the petitioner moved an application to the Tribunal u/s 256(1) of the Act.

2. In response to the notice issued by the IAC u/s 274(1) the assessee submitted a written explanation. The IAC by his order dated January 24, 1977, imposed a penalty of Rs. 81,000. Against the aforesaid order of the IAC the assessee filed an appeal before the Income Tax Appellate Tribunal, Allahabad. The Tribunal decided the appeal by its order dated 21st September, 1978, reducing the penalty to Rs. 52,799. The petitioner thereupon filed a reference application before the Tribunal u/s 256(1) of the Act against the order dated 21st

September, 1978, which is still pending. The petitioner also made an application u/s 254(2) for recalling the order dated 21st September, 1978. The stand taken was that Section 274 had been amended with effect from April 1, 1976, by the T.L. (Amend.) Act 1975, as a consequence of which the IAC had no jurisdiction to impose penalty. The Tribunal dismissed the application by its order dated July 27, 1979, observing that there was no mistake apparent on the face of the record which could be rectified in exercise of the power u/s 254(2) of the Act,

3. At this stage the petitioner filed the present petition challenging the validity of the order of the IAC imposing the penalty as well as the legality of the order of the Appellate Tribunal upholding the imposition of the penalty though reducing it to the figure mentioned earlier. The case taken up in the petition is that on the date when the IAC imposed the penalty he had no jurisdiction in view of the amendment introduced in Section 274(2) of the Act. Sub-section (2) of Section 274, before its deletion by the T.L. (Amend.) Act, 1975, read as follows :

"Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that sub-section, the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

4. This provision was deleted by the Amending Act of 1975 with effect from April 1, 1976. The result being that after April 1, 1976, the IAC lost jurisdiction to impose any penalty even in a case where the income concealed or inaccurate particulars furnished exceeded a sum of Rs. 25,000. As ruled by this court in Commissioner of Income Tax Vs. Om Sons, , a court or tribunal deciding a matter must not only be possessed of jurisdiction initially but also be clothed with the power to decide the matter when the final order is passed. In the present case when the matter was referred to the IAC it was validly done but when the final order imposing the penalty came to be passed by the IAC he had lost jurisdiction to impose penalty in view of the amendment introduced with effect from April 1, 1976.

5. Learned counsel for the Department contended that the petition was highly belated and it was not a fit case for interference by this court. It is true that the impugned order of the IAC was passed on January 24, 1977, and the appellate order of the Tribunal on September 21, 1978, but the petitioner has put forward a plausible explanation for the delay in approaching this court. It has been stated that on account of wrong legal advice the assessee challenged the order of the IAC before the Tribunal when in fact no appeal u/s 253 lay to the Tribunal against the impugned order of the IAC. It was only when it was discovered that the remedy sought for by the petitioner was not in accordance with law that it was decided to approach this court under Article 226 of the Constitution. We see no

reason to doubt the bona fides of the petitioner. The petitioner was taking steps for setting aside the order imposing penalty but on account of mistaken legal advice a wrong course was adopted. Since we are satisfied, that the wrong procedure adopted by the petitioner was on account of bona fide mistaken legal advice, it should not be penalised for approaching this court late.

6. This question may be considered from another angle also. The order of the IAC is wholly without jurisdiction. The petitioner shall have a right to challenge it whenever it is sought to be enforced against it. It may be that the order was passed in January, 1977, but if that order is sought to be enforced today, it would give rise to a cause of action to the petitioner to approach this court. Judged from that angle the petition cannot be said to be belated.

7. In the result this petition succeeds and is allowed. The impugned orders of the IAC dated January 24, 1977, and that of the Income Tax Appellate Tribunal dated September 21, 1978, are quashed. Parties shall bear their own costs.